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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| Applicant(s): | Philip L. Atwater, et al. | Group Art Unit | 2618 |
| Application No. | 10/625,714 | Examiner: | Yuwen Pan |
| Filed: | July 23, 2003 | Confirmation No. | 8119 |
| For: | Wireless Communications System | Atty. Docket No. | 411677 |

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

DECLARATION UNDER 37 C.F.R. § 1.132

Sir:

We, James DeHaan, and Malin Lester Jacobs, declare and state that:

1. We are citizens of the United States of America, residing respectively, at, 2791 South Reed Street, Denver, CO 80225, and 7022 South Dexter Street, Centennial, CO 80122.
2. We are co-authors of a document, Jacobs, et al., Tunnel Communication Test Results, U.S. Department of the Interior Bureau of Reclamation, Project Notes 8450-98-06, September 1998.
3. The aforementioned document has been cited against claims 1-22 of the above listed U.S. Patent Application, of which we are joint-inventors, in an Office Action of May 11, 2006, as anticipating claims 1-22 under 35 U.S.C. §102(b).
4. This is incorrect. In summary: The document in question was written in 1998 and remained internal to the research group within the Department of the Interior, Bureau of Reclamation until May 30, 2003. On that day, two electronic versions were placed onto the Bureau of Reclamation's Web Site and became available to the public.

BLDRDOCS 99119v5

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5. The report was not published in 1998. The Examiner has misconstrued the relevant facts. It is common knowledge that the year a document is written is not necessarily the year the document is published.

6. In 1998 and for several years thereafter, this report was a Bureau of Reclamation internal document. The third page (including the cover page) of the report contains a disclaimer which reads:

DISCLAIMER

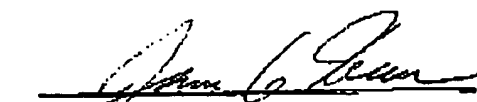
This written matter consists of project notes for Bureau of Reclamation internal use only. The notes and associated materials have not been edited or reviewed for general release. The information, ideas, and concepts presented are those of the authors and do not necessarily represent the views of the U.S. Government or the Bureau of Reclamation. Use of this material as part of or in support of advertising for referenced products is forbidden.

7. This disclaimer is included in all copies of the report provided, including the copy of record here. The report presents the results of tests conducted by us in absolute confidence with the development of our invention in mind.

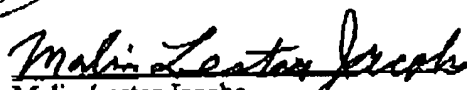
8. This unpublished, internal document written by two of the three inventors in pursuit of the invention cannot be considered to anticipate the claims made for the invention, and thus be used to deny the claims of the invention. It strikes us as essentially the same as an Examiner denying the claims for an invention based on an inventor's unpublished laboratory notebook anticipating the claims made in the patent application of the inventor.

9. We hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

DECLARATION UNDER 37 C.F.R. § 1.132


James DeHaan

11-13-06
Date


Malin Lester Jacobs

11-13-06
Date